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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

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LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A12-795
	)	
of	)	THE OFFICE OF PLANNING'S
	)	RESPONSE TO INTERVENORS'
WEST MAUI LAND COMPANY, INC., a	)	PROPOSED FINDINGS OF FACT,
Hawai'i corporation, and KAHOMA	)	CONCLUSIONS OF LAW, AND
RESIDENTIAL LLC, a Hawai'i limited	)	DECISION AND ORDER;
liability company,	)	
	)	CERTIFICATE OF SERVICE
To Amend the Land Use District Boundary of	)	
certain land situated at Lahaina, Island of	)	
Maui, State of Hawai'i, consisting of 16.7	)	
acres from the agricultural district to the	)	
urban district, Tax Map Key No. (2) 4-5-	)	
010:005	)	

**THE OFFICE OF PLANNING'S RESPONSE TO INTERVENORS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

The Office of Planning ("OP") objects both to Intervenor Routh Bolomet ("Bolomet") and to Intervenor Michelle Lincoln's ("Lincoln") (or collectively as "Intervenors") Proposed Findings of Fact, Conclusions of Law, and Decision and Order. OP recommends that the Petition Area be reclassified, subject to appropriate conditions and findings of fact.

## I. ARGUMENT

### A. The Hawai'i State Plan.

Intervenors argue that the proposed Petition is not consistent with the Hawai'i State Plan. Hawaii Revised Statutes ("HRS") chapter 226 contains the Hawai'i State Plan. See HRS § 226-2.

In order to amend a district boundary, the Land Use Commission ("Commission") must find that the amendment "conforms to the Hawai'i State Plan." HRS § 205-17. HRS § 226-2 defines "conform" to mean "the weighing of the overall theme, goals, objectives and policies of this chapter and a determination that an action, decision, rule or state program is consistent with the overall theme, and fulfills one or more of the goals, objectives, or policies of this chapter." As in all petitions, therefore, the Commission must weigh the overall theme, goals, objectives and policies of HRS chapter 226 in order to determine "conformance." Broad discretion is then given to the Commission in making this determination.

In brief, the overall theme includes the following principles or values: (1) individual and family self-sufficiency; (2) social and economic mobility; and (3) community or social well-being. Self-sufficiency refers to the ability to express and maintain one's own self-interest. It is a description of the importance of individual freedom. Social and economic mobility refers to the importance of social and economic fulfillment, as determined by each individual. Community or social well-being refers to a number of benefits for the community as a whole. It is a balance to individual self-interest, and incorporates concepts of tolerance, respect, and the aloha spirit. See HRS § 226-3.

The State's goals include: (1) A strong, viable economy; (2) A desired physical environment; and (3) Physical, social and economic well-being. See HRS § 226-4. There are 25

objective areas and policies, containing a wide variety of subjects. See HRS §§ 226-5 through 226-27. There are also seven priority guidelines: (1) economic development, (2) population growth and land resource management, (3) affordable housing, (4) crime and criminal justice, (5) quality education, (6) principles of sustainability, and (7) climate change adaptation.<sup>1</sup> See HRS § 226-102. No single project can achieve all of these goals, objectives, policies, and priority guidelines. Whether a project can conform to the Hawai'i State Plan, therefore, involves the weighing of different and sometimes competing interests.

In this case, as outlined in the Petitioner's and County of Maui Planning Department's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the Project satisfies a number of objectives and policies and a number of priority guidelines, and is consistent with the overall theme and goals of HRS chapter 226. A few of these categories are highlighted below.

B. Economic Development.

1. Agriculture

Although its prior history in sugar cane cultivation indicates that the Petition Area could physically support certain types of agriculture, the rocky soils, surrounding urban community, relatively small acreage, irregular shape, and lack of inexpensive irrigation water infrastructure make it unlikely that a commercial agricultural enterprise would find the Petition Area suitable for agricultural use. See Written Testimony of Paul Singleton.

Intervenors argue that an irrigation line exists within the Petition Area. Any irrigation line which may exist within the Petition Area, however, appears to be abandoned and unconnected to any water source. Tr. 10/5/12, 85:2-15. Intervenors' concerns about the impact

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<sup>1</sup> The climate change adaption priority guideline is not yet codified. See Act 286, 2012 Session Laws of Hawaii.

of this 17-acre project on the State's objectives and policies for agriculture are overstated. See HRS §§ 226-7 and 205-17(3)(C).

2. Employment Opportunities

Although Lincoln argues that the construction-related jobs created by the Project are temporary, construction jobs by their very nature are temporary. This does not diminish the importance of the construction industry to the economic welfare of the State. Petitioner validly argues that the Project will have a positive impact on the State's economy. See HRS §§ 226-6 and 205-17(3)(E).

C. Physical Environment.

1. Open Space

Intervenor Lincoln argues that the Petition Area should be kept in the Agricultural District for its open space value. Although immediate neighbors may prefer open space to additional houses, from the larger county-wide perspective, the Petition Area has no unique characteristics that would differentiate the Petition Area's value as open space from any other vacant parcel of property. The Petition Area is proposed for residential development which would not have any significantly greater adverse impact on view planes than any other development in the area. More importantly, the County of Maui's designation of the area as "Open Space" in the West Maui Community Plan was superseded by the County's decision to approve the Project as a HRS chapter 201H project. See Petitioner's Ex. 11. Given the County's support for a 100% affordable housing project, the loss of open space does not justify denial of the request for urban classification.

D. Facility Systems.

OP examined the various impacts of the Project on State facilities, including traffic, public safety, and education. As is discussed in more detail in its testimony, OP believes that with appropriate conditions the Petitioner will appropriately mitigate the impacts to State facilities. See OP Exhibit 2.

1. Water

Intervenors argue that the Petition Area does not make adequate provisions for potable water. First, the approximately 17 acres at issue is not within a State Water Management Area, and the State Commission on Water Resource Management has not identified any concerns with obtaining sufficient potable water for the project. See OP Exhibit 2. Although the Petition Area has not obtained commitments for its water from the County Department of Water Supply or from a private developer, the County of Maui does not require these commitments for 100% affordable housing projects. See County Exhibits 5 and 8. Furthermore, OP has proposed a ten-year infrastructure deadline. See OP Exhibit 2. The developer will be required to obtain approvals from the County Department of Water Supply before completing its infrastructure. OP's proposed conditions, therefore, ensure that the Petitioner will resolve these impacts on County water facilities within a reasonable time period. If the developer cannot do so, the Petition Area will be vulnerable to a reversion order prior to vertical development. Consequently, the lack of a water commitment does not justify denial of the request for urban reclassification.

2. Wastewater

Intervenor Bolomet argues that the Lahaina Wastewater Treatment Plant is incapable of handling the wastewater from the Petition Area because of a U.S. Environmental Protection

Agency review. In comparison to the capacity of the Lahaina Wastewater Treatment Plant, however, the Petition Area produces only a small fraction of the total wastewater treatment demand. Tr. 10/4/12, 182:2-6. Any concern which may or may not exist with respect to the Lahaina Wastewater Treatment Plant would be a regional concern requiring a regional resolution. The development of the Petition Area will not significantly impact that regional resolution. Tr. 10/4/12, 182: 11-12.

E. Socio-cultural Advancement.

1. Housing

The Petition is for an affordable housing project. It was approved by the County of Maui as an affordable housing project under HRS chapter 201H and provides housing for a variety of income levels, from 80 to 160% of median income. The importance of affordable housing projects will not be belabored here. The Petition meets the objectives and policies of the State for socio-cultural advancement in housing. See HRS § 226-19 and the criteria of HRS § 205-17(3)(F).

2. Archaeological, Historic, and Cultural Resources

Intervenor Bolomet argues that the reclassification will negatively impact native Hawaiian culture.

There was a factual dispute as to the existence of significant archaeological features and burials within the Petition Area. The Archaeological Assessment which was approved by the State Historic Preservation Division (“SHPD”) concluded that there were no archaeological or historic features. Bolomet argues that there was a heiau and libation stone within the Petition Area, and a karst cave system within the Petition Area that could contain burials. The archaeologist, however, disagrees that the objects in question were a heiau or libation stone, and

SHPD reportedly did not disagree. See Petitioner's Exhibit 41. The analysis to determine archaeological and cultural significance necessarily requires some level of judgment. Given the existence of similar stones in the area, the significant reworking of the land through long time use of the area in plantation agriculture, the location of the alleged heiau or libation stone amidst a push pile of rocks that was placed on the Petition Area from an excavation site outside of the Petition Area, and the lack of corroborating contextual facts to support an interpretation of the stones as a heiau or libation stone, the opinion of the Petitioner's archaeologist appears validly reached and sufficiently trustworthy. This conclusion does not question the sincerity of contrary beliefs. But the best factual finding based upon the evidence in the record and the review by SHPD is that there are no archaeological or historic sites within the Petition Area.

Bolomet also argued that the Petition Area was part of an archaeological complex identified in Robert Connolly's prior archaeology report. Based upon the oral testimony and a review of the Connolly report, however, the archaeological complex identified in the Connolly report appears to be located outside of the Petition Area. Tr. 10/5/12, 113:14-19.

Bolomet submitted a 1942 map which indicated that a karst system might exist within the Petition Area. But the archaeologist doubted the existence of a karst cave system within the Petition Area. Tr. 8/23/12, 63:15-22. No karst caves or burials have ever been identified in the Petition Area, despite significant reworking of the land over a lengthy period of sugar cane cultivation. In addition, no karst formations were identified either along the natural Kahoma Stream channel or the new Kahoma drainage channel, and no eye-witness accounts of a karst formation was produced. Tr. 8/23/12, 64:7-14, and 10/5/12, 35:1-23. Finally, the archaeologist conducted an archaeological assessment approved by SHPD which included trenching, and performed additional trenching work thereafter. No historical or archaeological sites were

discovered. See Petitioner's Exhibit 41. Under these facts and circumstances, the best factual finding based upon the evidence in the record is that the archaeological assessment was adequate with respect to its investigation for burials. If any unidentified burials are found, the Petitioner will be required to comply with HRS chapter 6E, relating to inadvertent finds.

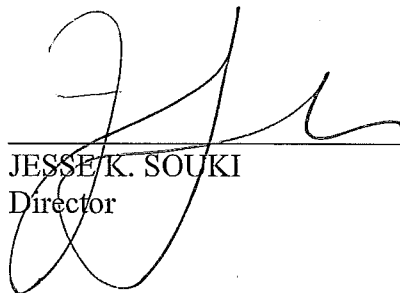
Intervenors also argue that the reclassification may disturb the habitat for the Hawaiian Owl. This conclusion, however, is contradicted by the Petitioner's biologist who does not believe the development of these seventeen acres will significant impact the Hawaiian Owl's existing habitat.

**II. CONCLUSION**

For all the aforementioned reasons, OP respectfully recommends that the Intervenors' Proposed Findings of Fact, Conclusions of Law, and Decision and Order be rejected, and that a Findings of Fact, Conclusions of Law, and Decision and Order supporting reclassification and reflecting OP's comments and objections to Petitioner's and County's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order be adopted.

DATED: Honolulu, Hawai'i, November 14, 2012.

OFFICE OF PLANNING  
STATE OF HAWAI'I



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JESSE K. SOUKI  
Director



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**CERTIFICATE OF SERVICE**

I hereby certify that due service of a copy of **THE OFFICE OF PLANNING'S RESPONSE TO INTERVENORS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**, was made by hand-delivery or by depositing the same with the U. S. mail, postage prepaid, on November 14, 2012, addressed to:

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DATED: Honolulu, Hawai'i, November 14, 2012.



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